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281100Z Jun 06

UNCLAS PARIS 004458

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SENSITIVE

DEPT FOR E, EB, EB/IPE, EUR/WE  
DEPT PLS PASS TO USTR FOR JSANFORD/VESPINEL/RMEYERS  
COMMERCE FOR SJACOBS, SWILSON  
DOJ FOR CHARROP, FMARSHALL, RHESSE  
COMMERCE PLEASE PASS TO USPTO

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [PGOV](#) [FR](#)

SUBJECT: FRANCE'S DIGITAL COPYRIGHT COMPROMISE GUARANTEES  
INTEROPERABILITY

REF A) PARIS 3153 B) PARIS 1847

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[1](#)1. (SBU) SUMMARY. Following the June 22 conciliation meeting of French Parliamentarians, a compromise draft of the copyright law has emerged to be approved by vote on June 30. The compromise text legitimizes the use of DRM (Digital Rights Management) technologies to protect authors' rights, but retains a requirement that companies using these technologies provide information necessary for rivals to develop compatible players and music stores. The compromise text falls short of defining interoperability, but gives inordinate powers to the new regulatory authority set up to enforce the interoperability requirements. It remains to be seen which other countries in the EU will want to follow the French example. Belgium and Denmark have already indicated their enthusiasm for this French precedent. END SUMMARY.

Forcing a political compromise

[1](#)2. (SBU) A conciliation committee of seven National Assembly members and seven Senators convened on June 22 to reconcile two versions of the French Digital Copyright Bill, in particular to address the interoperability requirements, which have been the most controversial element of the bill. The Senate had considerably toned down the National Assembly's "revolutionary" version of interoperability, forcing companies to share the secrets of their exclusive online music technology in order to allow competitors to make compatible digital music players. Parliamentarians on both sides of the political fence thought the divergences deep enough to require a second reading. However, the government, which controls the legislative process, decided to stick to its current "fast-track" emergency procedure, which requires only one reading by both houses. The compromise text will be subject to a final vote in the National Assembly and the Senate on June 30, the last day of this Parliamentary session.

Interoperability upheld, but not defined

[1](#)3. (SBU) The June 22 compromise text leans more to the pro-user National Assembly version as opposed to the more pro-owners rights, pro-business version of the Senate. The principle of interoperability has been treated as a "given," according to French copyright lawyers we contacted on June 27. Therefore, the conciliation committee preferred to focus on the practical and effective means of "guaranteeing" interoperability, rather than on defining it.

[1](#)4. (SBU) The text establishes a new Regulatory Authority for Technical Measures with the power to interpret and enforce the principle of interoperability and the right to private copy. To the original five members of the new authority, the conciliation committee has added a sixth specialist in information technologies. The new authority will keep its broad mandate from the National Assembly version, allowing it to issue injunctions and fines, which could represent up to five percent of the global pre-tax turnover of a company, in some cases, or up to 1.5 million euros in other cases, something no other independent authority can do under French administrative law. The new authority also has the power to defer a case to the French Competition Council.

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Comment  
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[1](#)5. (SBU) The final text is likely to pass solely with the support of the majority UMP party parliamentarians on June 30. However, the new legislation on Author's Rights and Related Rights in the Information Society, originally designed to bring France in line with the 2001 EU Digital Copyright Directive, clearly goes beyond the directive in its defense of the right to interoperability and private copy. The European Commission will have the last word on whether France's transposition is in conformity with the EU Copyright Directive. It is equally unclear whether French implementation of the directive is in accordance with the country's international commitments, including those stemming from the Berne

Convention. French copyright lawyers have noted that the French text made no direct reference to any international agreement. At this point, the French digital copyright bill raises more questions than it answers, especially since its enforcement will ultimately depend on future regulatory implementation and on a new authority vested with unprecedented powers.

Stapleton